

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7596

Petition of Central Vermont Public Service Corporation ("CVPS") for a Certificate of Public Good, pursuant to 30 V.S.A. Section 248, authorizing the reconstruction of the CVPS Hewitt Road substation in Bristol, Vermont, including (1) the replacement of structural steel; (2) replacement of an existing 46/12.47 kV 5.0/7.0 MVA transformer with a 7.5/10.5 MVA transformer; and (3) associated upgrades including oil containment, bus work, breakers with microprocessor-based relays, battery system, and a control house –)

and

Docket No. 7597

Joint Petition of Central Vermont Public Service Corporation ("CVPS") and Vermont Electric Power Company, Inc. ("VELCO"), for a Certificate of Public Good, pursuant to 30 V.S.A. Section 248, authorizing (1) the reconductoring of 3.9 miles of 46 kV transmission line in Middlebury and Weybridge, Vermont; (2) construction of a new 46 kV transmission line 5 miles in length in Weybridge and New Haven, Vermont; (3) expansion of the CVPS Hewitt Road substation, including the installation of a 46 kV 5.4 MVAR capacitor bank, in Bristol, Vermont; (4) installation of new substation breakers at the VELCO Middlebury substation in Middlebury, Vermont; and (5) installation of new substation breakers at the VELCO New Haven substation in New Haven, Vermont –)

Order entered: 11/16/2011

PROTECTIVE ORDER RE
CRITICAL ENERGY INFRASTRUCTURE INFORMATION

I. BACKGROUND

On August 20, 2010, the Public Service Board ("Board") issued an Order and two Certificates of Public Good ("CPG") approving, with conditions, (1) the reconstruction of the Central Vermont Public Service Corporation ("CVPS") Hewitt Road substation in Bristol,

Vermont, and (2) the "Middlebury Reliability Project" proposed by CVPS and Vermont Electric Power Company, Inc. ("VELCO"). In the Order, the Board denied, without prejudice, CVPS's motions for confidential treatment of Exhibits CVPS-7597-LRK-2, JRF-21 and JRF-23. The Order provided that:

The redacted information in those exhibits shall remain under seal pending the filing of a renewed or modified motion by CVPS. CVPS may file a renewed or modified motion within 30 days of the date of this Order. If a renewed or modified motion is not filed by that deadline, the subject exhibits shall be made part of the public record in this proceeding.¹

On September 20, 2010, CVPS filed a request to extend the interim protections afforded to the non-redacted versions of Exhibits CVPS-7597-LRK-2, JRF-21 and JRF-23 until the Board concludes its consideration of a pending request by VELCO for the commencement of a workshop to address the identification, protection, and handling of Critical Energy Infrastructure Information ("CEII").

By Order issued on October 20, 2010, the Board extended the interim confidential treatment of portions of Exhibits CVPS-7597-LRK-2, JRF-21 and JRF-23 that may constitute CEII, pending further review of CEII-related issues in the workshop process.

The Board's CEII workshop process has now been completed, and on October 3, 2011, CVPS filed a Revised Motion for Confidential Treatment of Selected Prefiled Exhibits of Central Vermont Public Service Corporation (the "Revised Motion"). In its Revised Motion, CVPS requests that Exhibits CVPS-7597-LRK-2, JRF-21 and JRF-23 be protected "from public disclosure throughout the pendency of this proceeding and while they are in the Board's possession."² CVPS submitted an averment log to support its Revised Motion.

On October 17, 2011, the Department of Public Service ("Department") submitted by electronic mail a response to CVPS's Revised Motion. In its response, the Department states that it

concurrs that CVPS has stated a prima facie basis on which to keep the redacted information confidential pursuant to their claim that it constitutes Critical Energy Infrastructure Information and consistent with the Board's averment requirements

1. Order of 8/23/10 at 70.

2. CVPS Revised Motion at 14–15.

as set forth in the Board's Order of 8/1/11 in Docket 7730. On this basis, the Department supports the motion.³

II. DISCUSSION

We have reviewed the motion and supporting materials, and conclude that, with the exception of one category of information in Exhibit CVPS-7597-LRK-2 related to remedies for system vulnerabilities, CVPS has made a *prima facie* showing that confidential treatment is warranted for the information contained in Exhibits CVPS-7597-LRK-2, JRF-21 and JRF-23. Therefore, we grant CVPS's motion for a protective order, except for the information in Exhibit CVPS-7597-LRK-2 related to remedies for system vulnerabilities (identified more specifically below). We will provide CVPS the opportunity to supplement its averments to provide additional justification for the proposed redactions to Exhibit CVPS-7597-LRK-2 related to remedies for system vulnerabilities.

To promote full public understanding of the basis for its decisions, the Board has actively taken steps to limit the amount of information subject to protective orders. The Board has encouraged parties to remove material from that protection to the extent possible. Since 2001, the Board has required petitioners seeking a protective order to submit a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that they wish to be kept under seal. This arrangement appropriately places a heavy burden on the party seeking confidentiality to justify that decision. It also ensures that counsel for the party seeking confidentiality has actually reviewed and considered the relevant confidentiality factors, as they relate to the specific document or information at issue.⁴ Generally, the Board only resolves disputes about information when there is a genuine disagreement about its confidential nature.⁵ However, even when the motion is uncontested the

3. E-mail message from Jeanne Elias, Esq., Department of Public Service, to Susan M. Hudson, Clerk of the Board, October 17, 2011.

4. *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC*, Docket No. 6545 ("Entergy Docket"), Order of 11/9/01 at 5-6.

5. *Id.* at 6.

Board will review the motion and supporting averment or averments to ensure that the moving party has presented a *prima facie* case for keeping the document or information under seal.

In determining whether to protect confidential information, we consider four issues:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information which should be protected?
- (2) Does the matter sought to be protected contain CEII?
- (3) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?
- (4) Has the party seeking protection shown "good cause" for invoking the Board's protection?⁶

CVPS maintains that the exhibits in question constitute CEII as defined by the Federal Energy Regulatory Commission ("FERC"). According to CVPS:

Because the confidential information contained in the Confidential Exhibits relates to exposure to system contingencies and/or discusses specific details about VELCO facilities, CVPS believes this information could be used by a third party wishing to do harm to or severely damage critical electric system assets and should therefore be granted protection from disclosure subject to the requested Protective Order.⁷

In particular, Exhibit CVPS-7597-LRK-2 is the Revised and Updated Middlebury/New Haven Area Study, which contains information related to exposure to system contingencies and includes specific details about VELCO facilities with which CVPS interconnects. Exhibit CVPS-7597-JRF-21 is the VELCO New Haven Substation General Arrangement Plan, and Exhibit CVPS-7597-JRF-23 is the VELCO New Haven Substation Foundation Plan; each of these exhibits includes confidential information regarding the VELCO bulk electric system.

FERC began limiting public access to CEII in October of 2001, in response to the terrorist attacks of September 11, 2001, with the issuance of Treatment of Previously Public Documents, Docket No. PL02-1-000, 97 F.E.R.C. 61,030 (2001). FERC has since issued a series of subsequent orders that establish formal procedures for the management and consistent

6. See, e.g., Entergy Docket, Order of 3/29/02 at 2.

7. CVPS Revised Motion at 6.

treatment of, and restrictions on access to, CEII (including but not limited to Orders No. 630, 630-A, 643, 662, 702 and 890).⁸

We have reviewed CVPS's Revised Motion and supporting materials, and have applied the existing standard. With respect to the alleged CEII, we conclude that CVPS has made a *prima facie* showing that the redacted information falls within the FERC definition of CEII, except for one category of information in Exhibit CVPS-7597-LRK-2. CVPS seeks to keep confidential, as CEII, information on pages 12, 16, 22, 60 and 61 of Exhibit CVPS-7597-LRK-2 that provides a "[d]escription of remedies for system vulnerabilities including plans for system restoration and use of back up facilities."⁹ It is not clear, without further explanation, why such descriptions of remedies would necessarily constitute CEII, and accordingly we will not grant confidential treatment for this specific information at this time. Because CVPS has made a *prima facie* showing that the remaining redacted information contained in the exhibits detailed above is CEII, that information warrants confidential treatment. Therefore, we grant CVPS's motion for confidential treatment of the specific exhibits detailed above, i.e., Exhibits CVPS-7597-LRK-2, JRF-21 and JRF-23, with the exception of the information on pages 12, 16, 22, 60 and 61 of Exhibit CVPS-7597-LRK-2 that provides a description of remedies for system vulnerabilities.

III. ORDER

Therefore, IT IS HEREBY ORDERED that the Confidential Information provided by CVPS (as described in CVPS's Revised Motion) shall be treated in this proceeding as follows:

1. CVPS shall file, within ten calendar days of the date of this Order, supplemental averments that provide additional justification for the proposed redaction of information on pages 12, 16, 22, 60 and 61 of Exhibit CVPS-7597-LRK-2 that provides a description of remedies for system vulnerabilities. Any responses to CVPS's supplemental averments shall be filed within ten calendar days of the date the averments are filed. After receiving the supplemental averments and any responses, the Board will determine whether CVPS has made the requisite *prima facie*

8. FERC procedures for the management of CEII are also found at 18 C.F.R. §§ 388.112 and 388.113.

9. CVPS Revised Motion at 8.

showings for confidentiality. If CVPS chooses not to file a supplemental averment for any particular redaction, CVPS shall file a new public version of the subject exhibit with that redaction unsealed, within ten calendar days of the date of this Order. The information on pages 12, 16, 22, 60 and 61 of Exhibit CVPS-7597-LRK-2 that provides a description of remedies for system vulnerabilities shall remain under seal on an interim basis pending further action as described in this paragraph.

2. All testimony, affidavits, transcripts, exhibits, and other documents that are subject to this Order as confidential information, and any documents that discuss or reveal documents that constitute confidential material, shall be placed in a sealed record by filing such information in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the content (*e.g.*, exhibit, report, etc.), and a statement that it shall not be opened or released from the custody of the Clerk of the Board except by order of the Board. Notwithstanding such a statement, the members of the Board, any employee or consultant specifically authorized by the Board to assist the Board in this proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed confidential information, but shall not disclose such information to any person.

3. At any hearing or conference in this proceeding, no persons, other than those who have signed or agreed to be bound by this Order and the Protective Agreement approved in the Order of June 1, 2010, and those whom the Board has expressly authorized to have access to this confidential information, shall be permitted to give, hear or review testimony given or held with respect to this confidential information.

4. Each Board stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such Board stenographer or reporter shall be instructed to and shall start a separate transcription for testimony or discussion on the record of confidential information. Such transcription shall be marked "Confidential" and shall be sealed and filed with the Clerk of the Board, and copies of the same shall be made available only to those persons authorized to view such information. Such transcription shall, in all other respects, be treated as confidential information pursuant to this Order.

5. The Board retains jurisdiction to make such amendment, modifications and additions to this Order as it may, from time to time, deem appropriate, including any such amendments, modifications or additions resulting from a motion made pursuant to the Protective Agreement.

6. Any party or other person may apply to the Board for an amendment, modification or addition of this Order.

Dated at Montpelier, Vermont, this 16th day of November, 2011.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: November 16, 2011

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)